

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FOREST LABORATORIES, INC., )  
FOREST LABORATORIES HOLDINGS, LTD., )  
MERZ PHARMA GMBH & CO. KGAA, and )  
MERZ PHARMACEUTICALS GMBH, )

Plaintiffs,

v.

COBALT LABORATORIES INC., LUPIN )  
PHARMACEUTICALS, INC., LUPIN LTD., )  
ORCHID PHARMACEUTICALS INC., ORCHID )  
CHEMICALS & PHARMACEUTICALS LTD. )  
(d/b/a ORCHID HEALTHCARE), TEVA )  
PHARMACEUTICALS USA, INC., UPSHER- )  
SMITH LABORATORIES, INC., WOCKHARDT )  
USA INC., and WOCKHARDT LIMITED, )

Defendants.

C.A. No. 08-21-GMS

**AFFIDAVIT OF DR. C. BHAKTAVATSALA RAO**

I, Dr. C. Bhaktavatsala Rao, declare and state as follows:

1. I am Deputy Managing Director of Orchid Chemicals & Pharmaceuticals Ltd. ("Orchid India") and sit on its board of directors. I am authorized to make this statement on Orchid India's behalf. I have personal knowledge of the facts asserted herein and, if called as a witness, could and would competently testify to these matters.
2. Orchid India is an Indian corporation, which has its principal place of business at Orchid Towers, 313 Valluvar Kottam High Road, Nungambakkam, Chennai, Tamil Nadu 600 034 India. Orchid India is involved in the development and manufacture of active pharmaceutical ingredients and finished dosage forms, as well as in drug discovery.

3. Orchid Healthcare, a Division of Orchid India, undertakes development and manufacture of finished dosage forms and submission of Abbreviated New Drug Applications (ANDAs) for such finished dosage forms.

4. Orchid India owns 100% of the defendant Orchid Pharmaceuticals, Inc. ("Orchid Delaware"), a Delaware holding company.

5. Orgenus Pharma, Inc. ("Orgenus") is a wholly-owned subsidiary of Orchid Delaware. It is a New Jersey corporation with its principal place of business in Princeton, NJ.

6. Orchid India's Board is composed of Mr. R. Narayanan, Mr. K. Raghavendra Rao, Dr. M. R. Girinath, Dr. I. Seetharam Naidu, Dr. Anzaghi Piergiorgio, Mr. Deepak Vaidya, Mr. Subramanian Andi, Mr. Anil Thadani, Mr. Rajgopal Rajkumar (alternate to Mr. Anil Thadani), and myself.

7. Orchid India has no offices, facilities, registered agents, or employees in Delaware. It does not have any local telephone numbers or bank accounts. It owns and leases no property in Delaware.

8. Orchid India's employees do not make regular visits to the State of Delaware.

9. Orchid India does not sell any products directly to retailers in the United States. Instead, it partners with other companies who are responsible for selling Orchid's products in the United States. As a manufacturer of generic pharmaceuticals, Orchid India does not market or advertise its products directly to consumers in the United States.

10. Orchid India does not solicit business in Delaware, and does not derive substantial revenues within the State. It has not sold any product in Delaware on a systematic or continuous basis. It does not have any distributors or suppliers in Delaware. Orchid India is not registered

with the Secretary of State to do business in Delaware, and is not licensed to sell drugs in the state.

11. It has never commenced any legal action or proceeding in Delaware, and has not previously been named a defendant in any action in Delaware.

12. Orchid India keeps its own books and maintains separate bank accounts from its subsidiaries. Orchid India is, and holds itself out to the public as, a separate corporate entity from its subsidiaries. It maintains corporate formalities.

13. Orchid Delaware is not an agent of Orchid India. Orchid Delaware does not have the power to act or sign for Orchid India and cannot otherwise bind Orchid India to any contractual obligations.

14. On October 16, 2007, Orchid Healthcare submitted an ANDA to the U.S. Food and Drug Administration ("FDA"), which is the subject of the instant lawsuit, and named Orgenus as its U.S. regulatory agent. That ANDA, assigned No. 90-044, relates to a generic memantine hydrochloride drug product that Orchid India seeks to manufacture and market upon approval by the FDA.

15. ANDA No. 90-044 was prepared by Orchid India in India.

16. Orchid Delaware did not assist in either the preparation of ANDA No. 90-044 or its submission to the FDA.

17. Orchid India is presently involved in unrelated litigation arising from submission of other ANDAs by Orchid Healthcare in the District of New Jersey. Orchid India has not challenged personal jurisdiction in that district.

I declare under penalty of perjury and the laws of the United States that the foregoing is true and correct.

Dated: February 29, 2008

/s/ Dr. C. Bhaktavatsala Rao

Dr. C. Bhaktavatsala Rao

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**CERTIFICATE OF SERVICE**

I, Richard L. Horwitz, hereby certify that on March 3, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on March 3, 2008, the attached document was Electronically Mailed to the following person(s):

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